IN THE

Supreme Court of the United States

APR 30 1976
MICHAEL RODAK, JR., CLERK

October Term, 1975, No. 75-1345

KENT NURSING HOME,

Petitioner,

-against-

Special State Prosecutor for Health and Social Services (CHARLES J. HYNES),

Respondent.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

REPLY BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

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BLEED THROUGH

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POINT I

THIS PROCEEDING IS NOT MOOT. THE EXAMINATION OF THE BOOKS AND RECORDS OF PETITIONER IS AN ONGOING ONE.

BLEED THROUGH

The petition for certiorari should not be denied as moot. In fact, petitioner was ordered and directed by the New York Supreme Court to allow the examination of its books and records. The examination was not submitted to voluntarily, but, rather, was in compliance with and under compulsion of court order. The same constitutes testimonial compulsion. Cf. Bumper v. North Carolina, 391 U.S. 543.

The investigation and auditing of petitioner's voluminous books and records cannot be completed in a few days. Indeed, the investigation, by its very nature, is a continuing and ongoing one. The examination and auditing of the books and records of Kent Nursing Home is not complete, is still continuing, and is expected to continue for some time in the future, all at the petitioner's place of business, by representatives of respondent. Under these circumstances, petitioners are entitled to all of the protections afforded them by the Constitution.

BLEED THROUGH

POINT II

THE RECORDS SUBPOENAED ARE NOT "REQUIRED RECORDS".

Respondent states in his brief at pages 6 and 7 thereof, that Public Health Law §2803B was not relied upon by the courts of New York to support the conclusion that the subpoenaed records are required records. Such a statement flies in the face of the explicit language of the Appellate Division, which relied upon that section specifically for its determination that the records subpoenaed were "required records". 49 A.D. 2d 616, (Appendix pg. 34), which was affirmed by the New York Court of Appeals on the same basis. As stated in the Petition for Certiorari, Public Health Law §2803B was not in force until 1974, accordingly, any claim that that section is authority for the keeping of various records prior to 1974 is specious. The constitutional rights of the petitioner cannot and should not have been torn away by reason of an inapplicable statute.

CONCLUSION

THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE GRANTED.

Respectfully Submitted,

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